IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 16170 of 2003

For Approval and Signature:

HON'BLE MR.JUSTICE N.G.NANDI

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

SUREKHABEN ALIAS MOSAMBI W/OFRAVINDRABHAI KAUTIKBHAI PATIL

Versus

STATE OF GUJARAT

Appearance:

1. Special Civil Application No. 16170 of 2003

MS SUBHADRA G PATEL for Petitioner No. 1

MS. PAURAMI SHETH, LD AGP for Respondent No. 1-3

RULE SERVED for Respondent No. 1-2

CORAM : HON'BLE MR.JUSTICE N.G.NANDI

Date of decision: 04/03/2004

ORAL JUDGEMENT

1. Ms. Paurami Sheth, learned AGP has placed on

record the affidavit in reply filed by Respondent No.2, same is kept on record.

2. By this petition under Article 226 of the Constitution of India petitioner has challenged the order of detention No: PCB/PASA/173/2003 dated 6-9-2003 (Annexure-A) passed by Respondent no.2 under section 3 (1) of The Gujarat Prevention of Anti Social Activities Act, 1985 (hereinafter referred to as the "PASA Act") and prays for quashing and setting aside of the said detention order.

3. In the grounds of detention (Annexure-B) it is stated that one case under section 66(1) B, 65 (E), (A), 81 of the Bombay Prohibition Act came to be registered against the petitioner on 6-7-2003. In the grounds of detention the statement of two witnesses related to the incident on 15-2-2003 and 5-6-2003 have been referred. As far as the incident of 15-2-2003 is concerned, it has been stated by the witness that the petitioner and her associates came with liquor and asked the witness to take them to Santoshinagar Karanjwad. The witness refused to take them apprehending that the police would put him into difficulty, whereupon the petitioner and her associates started beating and insisted that they be taken upto Karanjwad, to which also witness denied and thereafter the witness was taken out of rickshaw and subjected to beating. The witness raised cries, therefore people assembled to rescue the witness, whereupon the petitioner and her associates ran towards the public with knife, sword etc. The people started running away out of fear which led to the atmosphere of panic and terror and the shops also were closed down, the traffic was also disrupted. Statement of witness relating to 5-6-2003 alleges that one person in a drunken state was walking on the road who dashed with the witness and witness told him to walk properly, whereupon the petitioner and her associates took up quarrel with the witness and started beating the witness with stick, hockey etc. When the people assembled to rescue the witness, the petitioner and her associates chased the people with weapons like stick and hockey which led to running away of the public out of fear requiring the shops to be closed down, the traffic was also adversely affected.

4. Privilege under section 9 (2) has been invoked stating that the witness expressed fear to their person and property from the petitioner and her associates requiring the identity of the witness to be withheld and therefore the identity has been withheld in the public interest. It is alleged that the petitioner is a

bootlegger dealing in sale of liquor which is injurious to public health and thereby obstruction to the maintenance of public order.

5. Challenging the detention order it is submitted by learned advocate for the petitioner that, there is no proper exercise of powers under section 9 (2) of the PASA Act, in as much as, there is no contemporaneous material to show that the statements given by the witnesses were genuine and that the fear expressed by them was also genuine. It is also further contended that there is no verification of the veracity of the incident and the antecedents, character etc. of the detenu were also not inquired into nor any exercise is undertaken to find out whether what the witness stated was correct or not.

6. It is suggested from the paper book that the statements given by the witnesses before the police authority were verified by the detaining authority. Witnesses have reiterated what they have earlier stated and also repeated the apprehension to their person and property from the petitioner and requested for withholding their identity. Except the verification of the statement given by the witnesses earlier, by the detaining authority, there is no other material on the basis of which it could be said that any exercise was undertaken in the direction of ascertaining the correctness/genuineness of the statement by the witnesses as also the fear expressed by them, about the incident alleged having occured in reality taken place. Thus there is no contemporaneous material to justify recording of the subjective satisfaction by the detaining authority as required under section 9(2) of the PASA Act.

7. Under the circumstances, for want of proper exercise of powers under section 9 (2) of the PASA Act the impugned detention order cannot be sustained and the same deserves to be quashed and set aside.

8. It is stated by Ms. S.G. Patel, learned advocate for the petitioner that, during pendency of this petition, the petitioner-detenu has been transferred from Vadodara Central Jail to Sabarmati Central Jail.

9. In the result, the petition is granted and accordingly allowed. The impugned detention order No: PCA/PASA/173/2003 dated 6-9-2003 (Annexure-A) passed under the Prevention of Anti Social Activities Act, 1985 by Respondent No.2 is quashed and set aside. The petitioner detenu - Smt. Surekhaben @ Mosambi, W/o Ravindrabhai Kautikbhai Patil is ordered to be set at

liberty forthwith, if not required in any other case. Rule is made absolute accordingly. Direct service permitted.

Dt: 4-3-2004 (N.G. Nandi, J)

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